

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

---

HORACE SHEPARD,

Petitioner,

-v-

9:23-CV-897 (AJB/MJK)

JOHN RICH, Superintendent  
of the Elmira Correctional Facility,

Respondent.

---

**APPEARANCES:**

HORACE SHEPARD  
Petitioner, Pro Se  
21-B-1288  
Cayuga Correctional Facility  
P.O. Box 1186  
Moravia, NY 13118

HON. LETITIA JAMES  
New York State Attorney General  
Attorneys for Respondent  
28 Liberty Street  
New York, NY 10005

**OF COUNSEL:**

PRISCILLA I. STEWARD, ESQ.  
Assistant Attorney General

**Hon. Anthony Brindisi, U.S. District Judge:**

**ORDER ON REPORT & RECOMMENDATION**

On July 26, 2023, *pro se* petitioner Horace Shepard (“petitioner”) filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. No. 1. Broadly speaking, the petition challenged the validity of petitioner’s 2021 conviction in Onondaga County Court following his plea of guilty to second-degree criminal possession of a weapon. *See id.* After an initial review, U.S. Magistrate Judge Andrew T. Baxter ordered respondent John Rich (“respondent”) to answer

the petition on August 3, 2023.<sup>1</sup> Dkt. No. 2. Thereafter, respondent filed the relevant state court records and opposed relief. Dkt. Nos. 8, 9. Petitioner filed a traverse. Dkt. No. 11. The matter was later reassigned and referred to U.S. Magistrate Judge Mitchell J. Katz. Dkt. No. 12.

On September 12, 2024, Judge Katz advised by Report & Recommendation (“R&R”) that the petition should be denied and dismissed. Dkt. No. 14. As Judge Katz explained, petitioner’s Fourth Amendment claims were procedurally barred, unexhausted, or meritless. *Id.* Judge Katz further determined that petitioner’s remaining challenges to his conviction were not cognizable on habeas corpus review. *Id.* Accordingly, Judge Katz recommended that the petition be denied and dismissed. *Id.*

Petitioner has not lodged objections. Notably, the copy of Judge Katz’s R&R that was initially sent to petitioner at Cayuga Correctional Facility was returned undelivered. Dkt. No. 15. This returned mailing included a sticker on the envelope that indicated “Return to Sender Unable to Forward” and a notation that stated “Did not pick up mail after 3 tries.” *Id.*

Thereafter, the Clerk of the Court confirmed petitioner’s current location using a DOCCS database and re-served the R&R to an appropriate address at the Cayuga Correctional Facility on October 8, 2024. Dkt. No. 15. Petitioner has not responded to this second mailing, which has *not* been returned undelivered. Thus, even accounting for the delay, the time period in which to lodge objections has long expired. *See* Dkt. Nos. 14, 15.

The matter has recently been reassigned to this Court for a decision. Dkt. No. 16. Upon review for clear error, the R&R will be accepted and adopted. *See* FED. R. CIV. P. 72(b).

Therefore, it is

---

<sup>1</sup> The petition initially named as a respondent “The People of the State of New York,” but, because the proper respondent in a § 2254 action is the superintendent of the facility in which the petitioner is incarcerated, Judge Baxter directed the Clerk of the Court to amend the caption appropriately. Dkt. No. 2 at 1 n.1.

ORDERED that

1. The Report & Recommendation (Dkt. No. 14) is ACCEPTED;
2. The petition is DENIED and DISMISSED; and
3. No certificate of appealability shall be issued.

The Clerk of the Court is directed to terminate the pending motion and close the file.

**IT IS SO ORDERED.**

Dated: January 24, 2025  
Utica, New York.

  
Anthony J. Brindisi  
U.S. District Judge